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OFFICE OF PETITIONS

In re Application :
Jacobsen, et al. :
Application No. 10/073,996 : DECISION ON PATENT TERM
Filed: February 14, 2002 : ADJUSTMENT
Attorney Docket No. 1001.1855103 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT", filed May 17, 2005, requesting correction of the patent term adjustment (PTA) from sixty-four (64) days to one hundred forty-six (146) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one hundred forty-six (146) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 22, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is sixty-four (64) days. On May 17, 2005, Applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is one hundred forty-seven (146) days.

Applicants assert entitlement to a patent term adjustment of one hundred forty-seven (146) days on the basis that the PTO improperly assessed Applicants a delay of eighty-two (82) days for filing a terminal disclaimer on February 22, 2005, after Applicants had filed a response on December 2, 2004.

Applicants state that the patent issuing from the application is subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of sixty-four (64) days based on an adjustment for PTO delay of two hundred seventy-four (274) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by Applicants' delays of thirty-seven (37) and ninety-one (91) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b) and eighty-two (82) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(8). The adjustment of 82 days is at issue.

On petition, petitioner has supplied a copy of an e-mail from the Examiner, dated February 18, 2005, requesting that an additional Terminal Disclaimer be filed. In view thereof, it is concluded that the Terminal Disclaimer filed February 22, 2005 was expressly requested by the Examiner. As such, no applicant delay should have been assessed.

Accordingly, the correct determination of PTA at the time of mailing of the Notice of Allowance is **one hundred forty-six (146) days** (274 days of PTO delay reduced by 128 (37+91) days of applicant delay).

The \$200 fee set forth in 37 C.F.R. § 1.18(e) has been charged to Deposit Account No. 50-0413, as authorized.

¹ Applicants filed the application for patent term adjustment together with the filing of the issue fee.